

A steamship line dodges a motor carrier's limitation of liability, or why truckers should do their own paperwork

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Here's a case that demonstrates the importance of documentation in intermodal relationships.

Shipper Levi-Strauss imported a load of blue jeans from Honduras by ocean carrier SeaLand to Port Everglades, Florida. SeaLand hired motor carrier Quaker to haul the cargo to its ultimate destination in Little Rock. The ocean portion of the carriage was successful, and SeaLand handed the jeans over to Quaker. Unfortunately, a thief posing as a Quaker employee disappeared with the load before it ever saw a highway.

Everyone agreed the carriers were liable. But the carriers' view of the world was a tad different than the shipper's regarding the extent of damages and limitation of liability. Levi-Strauss sued SeaLand, who sued Quaker, in a New York federal court. The three-way battle centered around Levi-Strauss's attempt to recover lost profits in addition to the cargo's manufacturing costs, and SeaLand's hopes to pin the whole mess on Quaker.

Generally, the measure of damages recoverable under the Carriage of Goods by Sea Act (COGSA, governing the loss per SeaLand's bill of lading) is "the difference between the fair market value of the goods at their destination in the condition in which they should have arrived and the fair market value of the goods in the condition in which they actually did arrive." Of course, the goods in this case didn't arrive at all, so their value at destination was zip.

Under this analysis, lost profits are recoverable damages under COGSA, but the shipper "must show that it in fact suffered lost profits and that it could not mitigate damages by substitution of comparable goods from the market." Levi Strauss couldn't meet that standard. Apparently, all jeans orders were timely filled from the shipper's other manufacturing sources. In other words, Levi-Strauss didn't lose a single sale as a result of the theft, so it didn't lose any profits. Consequently, the measure of damages isn't the jeans' retail sales value in Little Rock, but only the costs originally incurred to purchase the cargo in Honduras (about 240 grand).

SeaLand tried to argue that Levi-Strauss failed to prove the jeans actually were loaded into the ripped-off containers. True, no one testified they actually saw the containers being loaded (as might typically be done), but the court found scanned bar codes and manufacturing receipts sufficient. No evidence suggested the containers hadn't been loaded with jeans. Nice try, SeaLand.

In suing Quaker, the ocean carrier was after reimbursement from the motor carrier for the \$240,000 SeaLand was ordered to pay Levi-Strauss (known as an “indemnity action” in law-speak). Apparently, SeaLand didn’t have a limitation of liability argument against its shipper.

Quaker did. The trucker pointed to the limitation of liability clause in its tariff, which purported to cap Quaker’s liability for any cargo loss at \$100,000. Quaker wasn’t named on SeaLand’s bill of lading issued to Levi-Strauss, but the trucker urged that the ocean bill was intended to be a through bill of lading which would (per tiny words on the back) incorporate all connecting carriers’ tariffs.

But Quaker hadn’t issued its own bill of lading to SeaLand or Levi-Strauss. Moreover, Quaker had signed an Intermodal Interchange Agreement (IIA) with SeaLand which governed the two carriers’ relationship. The IIA provided that Quaker would reimburse SeaLand for any cargo losses that happened on Quaker’s watch.

The court found the IAA’s indemnity clause enforceable. Even if it weren’t, Quaker still couldn’t limit its liability to SeaLand. For motor carriers to open that umbrella by way of their tariffs, the law requires them (1) to offer their customers “a possibility of higher recovery by paying the carrier a higher rate”; and (2) to set forth the tariff term “in a reasonably communicative form, so as to result in a fair, open, just and reasonable agreement between the carrier and shipper [in this case SeaLand].” Quaker had done neither, and must pay back SeaLand the 240 thousand. The days of government-filed tariffs are pretty much over, so carriers should expect courts to rigorously enforce provisions regarding notice of their limited liability.

So what’s a trucker to do in intermodal relationships like this? The best answer, though not necessarily the logistically easiest, is never to haul a load without issuing a separate surface bill of lading and/or other contract that specifically limits the motor carrier’s liability. That might also prove problematic from a business prospective (ocean carriers understandably are very picky about indemnity provisions in their interchange agreements). Another approach is to take whatever steps possible toward ensuring that the ocean carrier’s liability is limited for any intermodal haul the trucker participates in, and have a Himalaya clause in the through bill extend that benefit to the trucker.

Ref: Levi Strauss & Co. v. SeaLand, 2003 WL 21108311 (SDNY 2003)